



The Comptroller General
of the United States

Washington, D.C. 20548

Pod

Decision

Matter of: Eugene P. Tuttle

File: B-223599

Date: January 5, 1987

DIGEST

State Department employee returning from overseas assignment on approved home leave to New York delayed travel to perform interim training assignment in Washington at request of agency. During 5-month training assignment employee's family permanently moved to California and agency approved employee's request for change of actual residence. Fact that employee subsequently completed training assignment and began home leave travel 2 days before approval to amend travel orders to reflect address change does not defeat entitlement to travel expenses to California address. Facts demonstrate that agency had already approved address change, definitely intended to allow home leave travel to California, and only inadvertently delayed effectuating this change in travel orders. Claims Group's holding that retroactive modification is permissible is sustained.

DECISION

Dianne L. Ott, Financial Operations, United States Department of State, requests reconsideration of our Claims Group's settlement No. Z-2854559, dated June 3, 1986, which allowed Mr. Eugene P. Tuttle's claim for home leave travel expenses. Since the facts demonstrate that the agency had already approved a change to Mr. Tuttle's actual residence, definitely intended to allow home leave travel to the new address, and only inadvertently delayed effectuating that change in his travel orders, we are sustaining our Claims Group's holding.

BACKGROUND

The record shows that under travel authorization No. 2025-363046 dated June 13, 1983, Mr. Tuttle was transferred back to the United States from his overseas assignment in Antananarivo, Madagascar. The State Department asked Mr. Tuttle to attend a 22-week training course beginning in August of 1983 in Washington, D.C., and to defer his scheduled home leave at South Beach, New York, until after the interim training assignment. In December 1983, Mr. Tuttle

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submitted a Form OF-126 (Residents and Dependency Report) requesting that his actual residence and home leave address be changed to reflect his family's permanent relocation from New York to California. His request was approved on January 13, 1984, and in late January, prior to his travel on approved home leave, Mr. Tuttle further requested that his travel orders for home leave be amended to reflect his new home leave address. Mr. Tuttle completed his training course on February 3, and began his home leave travel on February 4, 1984. On February 6, the State Department completed the action to amend his travel orders to permit travel to his home leave address of Redlands, California, noting that deferred home leave was "originally approved on Service needs grounds, with costs as an incidental factor in any consideration."

CLAIMS GROUP SETTLEMENT

In holding that Mr. Tuttle was entitled to reimbursement of expenses incurred while performing his home leave travel, our Claims Group noted the general rule that travel orders may not be revoked or modified retroactively so as to increase or decrease the rights which have accrued or become fixed under law and regulations, when the ordered travel has already been performed. However, the adjudication relied on an exception to this rule which permits changing transfer or travel documents when an error is apparent on the face of the original orders, or the facts and circumstances clearly demonstrate that some provision previously determined and definitely intended had been omitted through error or inadvertence in preparing the orders. 45 Comp. Gen. 599 (1966); 39 Comp. Gen. 337 (1959).

THE APPEAL

The State Department requests reconsideration emphasizing that the travel authorization was issued in accordance with Mr. Tuttle's established leave address of record. Thus, according to the State Department, had Mr. Tuttle not been authorized deferred home leave based on the needs of the State Department, he would have performed travel as authorized to the New York address without any question of administrative error being involved. The State Department reasons that it is not a matter of administrative error when the request to change the address of record was not submitted until 5 months later, after Mr. Tuttle arrived in Washington for training and after Mr. Tuttle's mother and father changed

their residence from New York to California. The State Department advocates that an employee's entitlement to reimbursement for home leave travel becomes fixed at the time that the travel commences under the applicable authorization and any changes must be requested and authorized before the travel commences; otherwise, the certifying officer is faced with a claim for travel reimbursement representing a modification and increase in the payment of travel expenses which have accrued and are fixed under law and regulation.

In support of this contention the State Department argues that were it allowed to make this payment, it is concerned about the far-reaching impact on other similar situations such as the settlement in the case of Frank G. Light, Jr., which was issued by our Claims Group under Z-2854101, May 16, 1985. In that case, the employee departed post on the first leg of travel and then submitted a request to change the authorized address of record which we held could only be approved for application to subsequent travel orders. In addition, citing our decision in B-130544, March 5, 1957, to the effect that the place of residence in the continental United States which is on file with the Department of State as of the date of issuance of the travel authorization is - controlling for determining subsequent travel entitlement, the State Department concludes that there was no administrative error in establishing Mr. Tuttle's place of residence which was not changed until 5 months after travel orders had been originated. Thus, while a change in home leave address would be appropriate for subsequent orders issued to Mr. Tuttle, in the case presented, the qualifying home leave residence address cannot be changed after the home leave travel has been ordered and initiated.

DECISION

In sustaining the holding of our Claims Group we emphasize that the timing of this case is essential to the entitlement theory. The record shows that, in connection with Mr. Tuttle's return from Madagascar, he deferred his home leave based on the needs of the State Department to complete 5 months of training in Washington, D.C. During this interim period, Mr. Tuttle's family permanently relocated to Redlands, California, and without family or housing facilities remaining in the New York area, Mr. Tuttle applied to have his actual residence and home leave address changed to that of his family in California. This request was approved on January 13, 1984, while Mr. Tuttle was still engaged in

training in Washington, D.C. With this change in his actual residence in-hand, Mr. Tuttle next sought to have his home leave travel orders amended to reflect the changed home leave address. In a memorandum dated June 21, 1984, forwarded through the Director, Office of Fiscal Operations at the State Department, Mr. Tuttle states--and the agency has not rebutted--that "except for the delay caused by an administrative processing official whose objection to [Mr. Tuttle's] request was subsequently held to have been based on an erroneous interpretation of rules, [Mr. Tuttle's] amended home leave travel orders authorizing travel to California would have been issued prior to his home leave departure on February 4, 1984." In any event, we note that final change of Mr. Tuttle's home leave travel orders to California was approved on February 6, 1984, just 2 days after Mr. Tuttle had commenced his home leave travel, and this brief period is consistent with the administrative delay portrayed by Mr. Tuttle's memorandum.

In these circumstances it is not administrative error as alleged by the State Department that underlies Mr. Tuttle's claim, but rather the delay amounting to inadvertence in effectuating the agency's intent to change Mr. Tuttle's home of record to California and further change his home leave travel orders to reflect that California destination. Unlike the Frank G. Light, Jr., adjudication referred to by the State Department, Mr. Tuttle initiated the change in his home of record and home leave destination far in advance of his actual travel, notwithstanding that it was after the initial travel order had been prepared. In this case, the delay in the travel was to accommodate the needs of the State Department and not the predelictions of Mr. Tuttle's travel itinerary. That finding distinguishes Mr. Tuttle's case from the Light adjudication where the actual travel had commenced and the employee sought to change his itinerary as he proceeded with his travel. Moreover, since the record supports the finding that Mr. Tuttle's delay in performing home leave travel to California resulted from his accommodation of the needs of the State Department we do not find that the \$640 increased cost to the government covering Mr. Tuttle's travel to California rather than New York presents an adequate justification for denying Mr. Tuttle's claim on the argued basis that the government's purpose has been frustrated by the substantial increase in cost.

Nor do we feel that our decision B-130544, March 5, 1957, should be read to prohibit change under any circumstances to

an actual residence address after a travel order has been prepared. We appreciate that Mr. Tuttle had already performed travel from Madagascar to Washington, D.C., but we also recognize that he was performing an interim 5-month training assignment in Washington pursuant to the needs of the State Department, and we do not agree that the existing travel order could not be modified to reflect changes in Mr. Tuttle's status during the 5-month period that he was in Washington, D.C. Such an unyielding adherence to the original home leave address in New York, where Mr. Tuttle no longer had a family or other housing facilities, would only thwart the repatriation purposes of the home leave entitlement.

As a result, we find that Mr. Tuttle's circumstances and actual residence had clearly changed during the interim period of training and before his actual home leave travel commenced, and that the agency had approved these changes and definitely intended to effectuate the change in the home leave travel orders. Since the effectuation of the change to the home leave travel orders was inadvertently delayed, those travel orders may be retroactively changed to reflect the definite intentions and clear understanding of the approving authority and the traveler.

We are sustaining the adjudication of our Claims Group holding that Mr. Tuttle is entitled to home leave travel expenses to Redlands, California.

for *Harry F. Van Cleave*
Comptroller General
of the United States